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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055269
Party	Plaintiff Mango's Tropical Cafe, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	01/18/2013
Attachments	MOT - Leave to Amend - AS FILED.pdf (3 pages)(113786 bytes) First Amended Petition to Cancel - AS FILED.pdf (6 pages)(133486 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Mango's Tropical Cafe, Inc.,
Petitioner,

v.

Tango Mango, LLC,
Registrant.

Cancellation No.: 92055269
Registration No.: 3,328,822
Mark: **TANGO MANGO**
Registration Date: November 6, 2007

PETITIONER'S MOTION FOR LEAVE TO FILE AMENDED PETITION TO CANCEL

Pursuant to Fed.R.Civ. P. 15(a) and TBMP § 507.02, Petitioner Mango's Tropical Cafe, Inc. ("Petitioner") respectfully requests that the Board grant leave to amend the original Petition to Cancel to assert two additional registrations, namely **MANGO'S (word mark)**, Reg. No. 4,190,731, and **MANGO'S TROPICAL CAFE (word mark)**, Reg. No. 4,224,643. A copy of the proposed First Amended Petition to Cancel is attached hereto as Exhibit A and incorporated herein by reference. In support thereof, Petitioner states as follows:

Under Rule 15, leave to amend a complaint is to be "freely given when justice so requires." Fed.R.Civ.P.15(a). This provision governing amended pleadings is typically liberally construed in favor of permitting amendments.

In view thereof, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties. This is so even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint, **including a claim based on a registration issued to or acquired by plaintiff after the filing date of the original complaint.**

See TBMP § 507.02, *citing Van Dyne-Crotty Inc. v. Wear-Guard Corp.*, 926 F.2d 1156, 17 USPQ2d 1866, 1867 (Fed. Cir. 1991) (amendment to add later-acquired registration to tack on prior owner's use); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216, 1217 (TTAB 1990) (notice of opposition amended during testimony period to add claim of ownership of newly issued registration); *Marmark Ltd. v. Nutrexp S.A.*, 12 USPQ2d 1843, 1844 (TTAB 1989); *Cudahy Co. v. August Packing Co.*, 206 USPQ 759 (TTAB 1979); and *Huffy Corp. v. Geoffrey, Inc.*, 18 USPQ2d 1240 (Comm'r 1990) (opposer's motion to amend to join party and claim ownership of registration granted)(emphasis added).

The focus of the proposed changes to Petitioner's Petition to Cancel concerns two additional registrations, namely **MANGO'S (word mark)**, Reg. No. 4,190,731, and **MANGO'S TROPICAL CAFE (word mark)**, Reg. No. 4,224,643, which were both issued following the initiation of this cancellation proceeding. None of the factors counseling against permitting the requested amendment are present here. This is Petitioner's first motion seeking leave to amend the Petition to Cancel. The amendment will not delay the current proceedings. There is no bad faith in bringing the related issues into a single proceeding. This is not a dilatory motive on the part of Petitioner. There would be no undue prejudice to Registrant by virtue of allowance of the amendment.

WHEREFORE, and for the above stated reasons, Petitioner Mango's Tropical Cafe, Inc. respectfully requests that the Board enter an Order granting Petitioner leave to file an amended Petition to Cancel.

Date: January 18, 2013

Respectfully submitted,

FRIEDLAND VINING, P.A.

/s/Jaime Rich Vining

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*Counsel for Petitioner Mango's Tropical
Cafe, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **PETITIONER'S MOTION FOR LEAVE TO FILE AMENDED PETITION TO CANCEL** was served upon the Registrant by delivering true and correct electronic copies of same to Registrant through its counsel on January 18, 2013 as follows:

Rebecca J. Stempien Coyle, Esq.
Levy & Grandinetti
P.O. Box 18385
Washington, D.C. 20036
mail@levygrandinetti.com

/s/Jaime Rich Vining
Jaime Rich Vining

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FIRST AMENDED PETITION TO CANCEL

Pursuant to the provisions of 15 U.S.C. § 1064(3) and TBMP § 307.02, Petitioner, Mango's Tropical Cafe, Inc., a Florida corporation located and doing business at 900 Ocean Drive, Miami, Florida 33139 ("Petitioner"), believes that it is and will continue to be damaged by Registration No. 3,328,822 and hereby petitions to cancel the same.

As grounds for this First Amended Petition, Petitioner alleges as follows:

1. Petitioner owns the following United States Trademark Registrations:

MANGO'S (word mark)	Registration No. 4,190,731	Nightclub services, in International Class 41; Restaurant and bar services, in International Class 43
MANGO'S TROPICAL CAFE (word mark)	Registration No. 4,224,643	Nightclub services, in International Class 41; Restaurant and bar services, in International Class 43
	Registration No. 3,284,057	Restaurant and bar services, in International Class 42

	Registration No. 3,108,906	Restaurant and bar services, in International Class 43
	Registration No. 3,700,648	Clothing, namely, infant's and children's underwear and bodysuits, t-shirts, sweatshirts, pants, sweatpants, shorts, tank-tops, halter tops, hats, jackets, shirts and sleepwear, in International Class 25
	Registration No. 3,512,984	Prepackaged foods, namely, entrees consisting primarily of poultry, in International Class 29; Computer services, namely, providing a website featuring entertainment information via a global computer network, namely, concert information, nightlife information, and entertainment information about music, singing, dancing, music videos, in International Class 41
	Registration No. 3,649,192	Metal key chains, in International Class 6; Postcards, greeting cards, calendars and pens, in International Class 16; Towels, in International Class 24; Bottled drinking water, in International Class 32; smoker's articles, namely, cigars, cigar cutters, cigarette lighters not of precious metal, and cigar boxes of non-precious metal, in International Class 34

2. The foregoing registrations are hereinafter collectively referred to as the “**MANGO’S Marks**”. The **MANGO’S Marks** are well-known, distinctive, and famous

trademarks that Petitioner has continuously and substantially exclusively used since at least as early as March 1991.

3. Petitioner's **MANGO'S** Marks have been heavily advertised and promoted in connection with Petitioner's restaurant and bar services for over 20 years. As a result of Petitioner's extensive use, the **MANGO'S** Marks are extremely strong and have garnered international recognition among the consuming public.

4. According to the Trademark Electronic Search System ("TESS") of the United States Patent and Trademark Office ("PTO"), Registrant Tango Mango, LLC ("Registrant") is the record owner of U.S. Trademark Registration 3,328,822 (the "'822 Registration") for the mark **TANGO MANGO** ("Registrant's Mark"), which registration issued on the Principal Register on November 6, 2007.

5. The '822 Registration alleges that Registrant's Mark has been in use in connection with "Carry-out restaurants; Restaurant services; Restaurants; Take-out restaurant services" in International Class 43 since July 25, 2005.

6. Registrant's Mark is confusingly similar to Petitioner's **MANGO'S** Marks in that Registrant's Mark mimics significant portions of the **MANGO'S** Marks. In addition, the overall commercial impressions of the marks are very similar, which erroneously suggests an affiliation with Petitioner.

7. In view of Petitioner's priority of use, the similarity of the parties' respective marks, and the overlapping nature of the parties' respective services, Petitioner believes that it is and is likely to continue to be damaged by the continued existence of the '822 Registration in that Registrant's Mark so resembles the **MANGO'S** Marks as to

be likely to cause the public to be confused, mistaken, or deceived into believing that Registrant's services originate from Petitioner or are in some way related to, associated with, or sponsored by Petitioner.

8. Accordingly, Petitioner's continued and legal use of the **MANGO'S** Marks will be impaired by the continued registration of the '822 Registration. Registration of Registrant's Mark should therefore be cancelled pursuant to the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that Registrant's Mark consists of or comprises a mark which so resembles a mark previously used in the United States by Petitioner in respect of related services as to be likely to cause the public to be confused, mistaken or deceived.

9. In addition, the '822 Registration should be cancelled pursuant to the provisions of 15 U.S.C. § 1125(c), in that Registrant's use of its Mark in connection with restaurant services will cause the dilution of the distinctive quality of Petitioner's **MANGO'S** Marks.

10. Registrant's use of its Mark in connection with identical services as Petitioner will irreparably dilute the distinctive **MANGO'S** Marks and injure Petitioner's business reputation.

11. Finally, Registrant's Mark will injure Petitioner by impairing Petitioner's ability to register other marks in connection with restaurant and related services.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this First Amended Petition to Cancel be sustained and granted in favor of Petitioner and that Registration No. 3,328,822 be cancelled and removed from the Principal Register.

Date: January 18, 2013

Respectfully submitted,

FRIEDLAND VINING, P.A.

/s/Jaime Rich Vining

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***Counsel for Petitioner Mango's Tropical
Cafe, Inc.***

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **FIRST AMENDED PETITION TO CANCEL** was served upon the Registrant by delivering true and correct electronic copies of same to Registrant through its counsel on January 18, 2013 as follows:

Rebecca J. Stempien Coyle, Esq.
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/s/Jaime Rich Vining
Jaime Rich Vining